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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
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CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO.16449 OF 2002
IN
LAND REFERENCE NO.25 OF 1996

Konkan Railway Corporation Ltd.,
Having its corporate office at
Belapur Bhavan, CBD Belapur,
New Bombay. ..Appellants

V/s.

1. Bhagoji Babu harekar ..Respondent
   Age 65 yrs, Occ.Agriculturist (org.Claimant)
   R/o. Kamathe (Harekarwadi)
   Tal.Chiplun Dist.Ratnagiri.

And

2. The Special Land Acquisition ..Respondent
   Officer, Ratnagiri (Org.Refree)

Ms.Kiran Bhagalia for the appellants.

Mr.M.M.Vaidya for the Respondents.

Coram : S.B.Mhase &@@
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R.S.Mohite,JJ@@
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Date : 12.10.2004.

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Judgment :- (Per : S.B.Mhase,J)@@
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. Heard both sides.

. Admit.

1. With the consent of the parties, the appeal is heard finally and is being disposed of as per the following order.

2. The land of respondent no.1 admasuring 0-95-5 R was acquired by the Special Land Acquisition officer under notification dated 12.12.1991 for the Konkan Railway project. The respondent has received an amount of award under protest on 16.6.1995 and has filed a land reference before the Special Land Acquisition officer. The special Land acquisition officer has referred the said matter to the Civil Judge, Senior Division, Ratnagiri. The said Land Reference was numbered as 25 of 1996. It was decided on 5.1.2001 and it was directed that the respondent Bhagoji Babu Harekar is entitled to receive enhanced compensation of Rs.1,91,077/- and it was further directed that he is entitled to Rs.1,91,077/- as 30% solatium under Section 23(2) of the Land Acquisition Act. In addition to that he was entitled to 12% component on the aforesaid amount from the date of notification under section 4 of Land Acquisition Act i.e. from 12.12.1991 till the date of taking possession i.e. till 16.6.1995. It was further directed that 9% interest p.a. shall be paid from the date of notification i.e. from 12.12.1991 upto one year and thereafter at the rate of 15% p.a. This award-decree passed in the Land Reference by the Civil Judge, Senior Division, Ratnagiri is challenged by the Konkan Railway since the acquisition was carried out by the Special Land Acquisition officer for acquiring body of Konkan Railway. However, in a Land Reference the respondents have not shown the Konkan Railway as a party and therefore, the land reference was decided in the absence of Konkan Railway being party respondent before the Civil Judge, Senior Division, Ratnagiri.

3. Under these circumstances, the appellants submitted this appeal alongwith a leave application since the appellants were not party to the initial proceedings. This court by order dated 29.4.2002 granted leave to file this appeal. Thereafter the matter is heard finally today by this court.

4. The learned Advocate for the appellants submitted that the appellants were not a party to the initial proceedings and they had no opportunity to contest the claim made by the respondents for enhancement of the compensation. The learned Advocate placed reliance on the Judgment of the Apex court in the case of M/s.Neyvely Lignite Corpn.@@

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Ltd., V/s. Spl. Tahsildar (Land Acquisition),@@
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against the award passed by the Collector and therefore, there is no fault on the part of the respondents in making or not making party to the acquiring body in the present petition. However, in view of the Apex court Judgment, we do not find any substance in the contention raised on behalf of respondent no.1. What we find is that the Konkan Railway should have been made a party in a reference and since it is an admitted position that the Konkan Railway is not a party to the proceedings, the order passed by the Civil Judge, Senior Division in Land Reference No.25/96 is not sustainable in law and requires to be set aside.

6. The learned Advocate for respondent no.1 submitted that in all these process the respondent no.1 has been put to an un-necessary harassment and inconvenience. He submitted that the land of the respondent has been acquired and inadequate compensation has been paid and when he got an enhanced compensation from the Civil Judge, Senior Division, the present acquiring body have come forward. In fact, as a result of the lapses on the part of the State Government, the appellants are put to advantageous position since they are not made a party and since they are getting matter remanded back. He submitted that the respondents are poor agriculturists and even if the matter is remanded back, they should not be put to unnecessary harassment and inconvenience. On the basis of the evidence which has been led by the respondents, the Civil Judge has considered the market price in view of the test laid down under Section 23 and has enhanced the compensation and therefore, the learned Advocate for the respondents submitted that even though for want of a party, the order is required to be set aside and the matter is required to be ramanded. Yet respondent no.1 be paid some amount out of the enhanced amount. He further submitted that in case the order is modified by the reference court after remand of the case the respondent no.1 will return back the amount. He further submitted that according to him in any eventuality the amount will not be varied, even the matter is heard after giving opportunity to the appellants, yet he had showed his willingness to give a solvent surety.

7. The learned Advocate for the appellants vehemently opposed for any direction to deposit the amount. She submitted that the enhancement had taken place because the State Government who was participating in the proceedings have not led any evidence and for that purpose the appellants should not be put to any sufference.

8. We have considered both sides. We find that it is a fact that respondent no.1 has lost his land for public purpose and the appellants are carrying out the activitiy of transporting the passengers and the goods and the business is being carried out by the appellants. Apart from that, what we find is that in case respondent prove the market price as they have proved in the present matter in the absence of the appellants, then the respondent will be entitled to the said amount. What we find is that since it is an amount of compensation, some relief should be granted in favour of the respondent, while we are granting order of the remand in favour of the appellants. The equity can be adjusted and we found that in the following manner equities can be adjusted.

9. In the result, the appeal is partly allowed. The order passed by the Civil Judge, Senior Division, Ratnagiri in a Land Reference No.25 of 1996 on 5.1.2001 is hereby set aside and the matter is remanded back to the Civil Judge, Senior Division, Ratnagiri. The appellants shall suo-moto appear before the Civil Judge, Senior Division, Ratnagiri on 23.11.2004 and shall file a written statement. After filing of the written statement, the Civil Judge, Senior Division, Ratnagiri shall recast the issues within a period of one week. One weeks time shall be granted to both sides to place list of witnesses and thereafter within one week the matter shall be listed for final hearing. At the final hearing, it will be open for respondent to lead evidence of the additional witnesses. It will be equally open for the appellants to cross-examine the respondent's witnesses and respondent (the earlier examined witnesses and the later on examined witnesses). Thereafter it will be open for the appellants to lead his own evidence and thereafter the matter will be closed. After closure of the matter, within a period of 15 days, arguments shall be heard by the Civil Judge, Senior Division, Ratnagiri and within a period of one week thereafter, the Judgment shall be delivered. This schedule shall be strictly followed by all the parties and the Civil Judge, and the parties are directed to co-operate with the Civil Judge, Senior Division, Ratnagiri.

10. We find it appropriate to direct the appellants to deposit amount of 50% enhanced compensation including the solatium, component and interest as directed in the order dated 5.1.2001 by the Civil Judge, Senior Division, Ratnagiri. The said amount shall be deposited within 3 weeks from today in the court of Civil Judge, Senior Division, Ratnagiri.

On deposit of such amount, the Civil Judge, Senior Division, shall release the 50% of the said deposited amount in favour of the respondent/claimants without any surety and if the respondents tender a solvent surety in respect of rest of the 50% , the same shall be released in favour of the respondents. Costs costs in cause.

11. Any observations made in this order shall not be taken into consideration by the Reference Court. The Reference court shall decide the matter on its own merits.

. Parties to act on an ordinary copy of this order duly authenticated by the P.S./Sheristedar of this court as a true copy.

(R.S.Mohite,J) (S.B.Mhase,J)@@
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